

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

American Standard Mortgage Company, and

Robert Tyler-Cook,
President and Designated Broker,
Respondents.

NO. C-03-149-03-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ISSUE AN ORDER
TO CEASE AND DESIST, DENY LICENSE,
PAY RESTITUTION, IMPOSE FINES,
COLLECT INVESTIGATIVE FEES, AND
PROHIBIT FROM PARTICIPATION IN THE
MORTGAGE BROKER INDUSTRY

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington ("Director") is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act ("Act"). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation, and based upon the facts available as of July 29, 2003, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. American Standard Mortgage Company ("ASMC") is known to conduct the business of a mortgage broker at:

520 NW Davis Street, Suite 201
Portland Oregon 97209.

B. Robert Tyler-Cook ("Tyler-Cook") is the President of ASMC and has been designated by ASMC as designated broker.

1 **1.2 Application for License:** On February 7, 2002, ASMC and Tyler-Cook filed an application with the
2 Department of Financial Institutions (“Department”) for a license to conduct business as a mortgage broker in the
3 State of Washington. No license has been issued to ASMC to conduct business as a mortgage broker in the State
4 of Washington.

5 **1.3 Conducting Business Without A License:** On at least one occasion, ASMC has obtained a residential
6 mortgage loan for a borrower who resides in the State of Washington.

7 **1.4 On-Going Investigation:** The Department’s investigation into the alleged violations of the Act by
8 ASMC and Tyler-Cook continues to date.

9 **II. GROUNDS FOR ENTRY OF ORDER**

10 **2.1 Licensing Requirement:** Pursuant to RCW 19.146.200(1), a person may not engage in the business of
11 a mortgage broker without first obtaining a license. Based on the information contained in the Factual
12 Allegations above, Respondents are in apparent violation of RCW 19.146.200(1).

13 **2.2 Unfair or Deceptive Practice:** Pursuant to RCW 19.146.0201(1), (2) and (3), a mortgage broker
14 required to be licensed may not employ any scheme, device, or artifice to defraud or mislead borrowers, engage
15 in any unfair or deceptive practice toward any person, or obtain property by fraud or misrepresentation. Based
16 on the information contained in the Factual Allegations above, Respondents are in apparent violation of RCW
17 19.146.0201(1), (2) and (3).

18 **2.3 Authority to Require Persons to Cease and Desist:** Pursuant to RCW 19.146.220(2)(d)(i), the
19 Director may issue an order requiring a person to cease and desist conducting a business in a manner
20 that is injurious to the public or violates any provision of this chapter.

21 **2.4 Authority to Deny License:** Pursuant to RCW 19.146.220(2)(a)(ii), the Director may deny a license
22 for any violation of RCW 19.146.0201(1), (2) and (3). Pursuant to WAC 208-660-160(7) and (14), the
23 Director may deny a license for violation of the Act and for an act of misrepresentation or fraud in any aspect of
24 the conduct of the mortgage broker business.

1 **2.5 Authority to Charge Investigation Fee:** Pursuant to RCW 19.146.228(2), WAC 208-660-060(4), and
2 WAC 208-660-061, upon completion of any investigation of the books and records of a mortgage broker other than a
3 licensee, the Department will furnish to the broker a billing to cover the cost of the investigation. The investigation
4 charge will be calculated at the rate of \$47.78 per hour that each staff person devoted to the examination.

5 **2.6 Authority to Impose Fine:** Pursuant to RCW 19.146.220(2)(c)(i) and WAC 208-660-165, the Director
6 may impose fines on the licensee for failure to comply with RCW 19.146.0201(1), (2) and (3), RCW
7 19.146.200 and RCW 19.146.265.

8 **2.7 Authority to Prohibit from the Industry:** Pursuant to RCW 19.146.220(2)(e)(i), the Director may
9 prohibit a covered individual from participation in the conduct of the affairs of a licensed mortgage broker for failure
10 to comply with RCW 19.146.0201(1), (2) and (3), RCW 19.146.200 and RCW 19.146.265.

11 **III. NOTICE OF INTENT TO ENTER ORDER**

12 Respondents' violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in
13 the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW
14 19.146.220. Therefore, it is the Director's intention to ORDER that:

- 15 3.1 Respondents cease and desist from conducting the business of a mortgage broker in the State of
16 Washington; and
- 17 3.2 American Standard Mortgage Company be denied a mortgage broker license; and
- 18 3.3 Respondents pay restitution for all fees collected from Washington borrowers; and
- 19 3.4 Respondents pay an investigation fee to be calculated at \$47.78 per hour for each staff hour devoted to
20 the investigation; and
- 21 3.5 Respondents pay a fine of \$1500.00 for engaging in the business of a mortgage broker without a license,
22 calculated at \$50.00 per day for 30 days.
- 23 3.6 Robert Tyler-Cook be prohibited from participation in the conduct of the affairs of any licensed
24 mortgage broker for a period of five (5) years.

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IV. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intent to Issue an Order to Cease and Desist, Deny License, Pay Restitution, Impose Fines, Collect Investigative Fees, and Prohibit from Participation in the Mortgage Broker Industry is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221. and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges and Notice of Intent to Issue an Order to Cease and Desist, Deny License, Pay Restitution, Impose Fines, Collect Investigative Fees, and Prohibit from Participation in the Mortgage Broker Industry.

Dated this 29 day of July, 2003.

/S/
CHUCK CROSS, ACTING DIRECTOR
DIVISION OF CONSUMER SERVICES
DEPARTMENT OF FINANCIAL INSTITUTIONS

Presented by:

/S/
Victoria W. Sheldon
Financial Legal Examiner

RCW 19.146.0201 Loan originator, mortgage broker – Prohibitions – Requirements. It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
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RCW 19.146.200 License – Required – Independent contractor – Suit or action as mortgage broker – Display of license. (1) A person may not engage in the business of a mortgage broker, except as an employee of a person licensed or exempt from licensing, without first obtaining and maintaining a license under this chapter. However, a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter.. . .

RCW 19.146.220 Director – Powers and duties – Violations as separate violations – Rules. (1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or

(ii) Pay restitution to an injured borrower; or

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

RCW 19.146.221 Action by director – Hearing – Sanction. The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

RCW 19.146.223 Director – Administration and interpretation. The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005. [1994 c 33 § 2.]

RCW 19.146.225 Director – Rule-making powers. In accordance with the administrative procedure act, chapter 34.05 RCW, the director may issue rules under this chapter only after seeking the advice of the mortgage brokerage commission and to govern the activities of licensed mortgage brokers and other persons subject to this chapter. [1994 c 33 § 15; 1993 c 468 § 9.]

RCW 19.146.228 Fees – Rules – Exception. The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and
- (3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account. [1997 c 106 § 13; 1994 c 33 § 9.]

RCW 19.146.230 Administrative procedure act application. The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

RCW 19.146.265 Branch offices – Fee – Licenses – Rules. A licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different name as the main office upon the payment of a fee as prescribed by the director by rule. Provided that the applicant is in good standing with the department, as defined in rule by the director, the director shall promptly issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued. [1997 c 106 § 19; 1994 c 33 § 24; 1993 c 468 § 18.]

WAC 208-660-060 Department's fees and assessments.

....

(4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

WAC 208-660-061 Fee increase. The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

(1) On July 1, 2002, the fee and assessment rates under [WAC 208-660-060](#), as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in [RCW 43.135.025](#).

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

WAC 208-660-160 License application denial or condition; license suspension or revocation. The director may deny or condition approval of a license application, or suspend or revoke a license if the applicant or licensee, or any principal or designated broker of the applicant or licensee:

....

(7) Has violated the provisions of the Mortgage Broker Practices Act, or the Consumer Protection Act;

....

(14) Has performed an act of misrepresentation or fraud in any aspect of the conduct of the mortgage broker business or profession;

....

WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act. Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order assess other penalties for a violation of the Mortgage Broker Practices Act.